

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

NAUTILUS INSURANCE COMPANY,

CIVIL ACTION NO.: 5:04-0655

Plaintiff,

v.

BIG CHIG, INC.; BIG CHIG TRUCKING,
also known as BIG CHIG TRUCKING COMPANY;
J&H TRUCKING; BLUESTONE COAL
CORPORATION; LOGAN & KANAWHA COAL
CO., INC.; RONNIE JOE LUSK; KAT TRUCKING
COMPANY; CHARLIE SANDERS; LORETTA
BAILEY, individually and as personal
representative of the ESTATE OF SHAWN KEITH
BAILEY, deceased; and JIM LIVELY INSURANCE,
INC.,

Defendants.

* * *

JIM LIVELY INSURANCE, INC.,

Third-party Plaintiff,

v.

BLOSS & DILLARD, INC.,

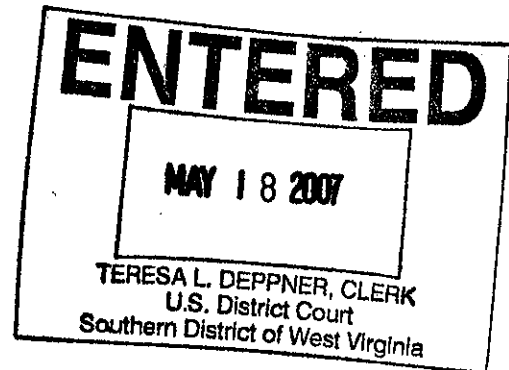
Third-party Defendant.

Hon. Thomas E. Johnston

AGREED ORDER

It is hereby ordered, adjudged and decreed that the following claims and/or pleadings
are voluntarily dismissed:

- (1) Counts one (no coverage for intentional acts), two (contractual liability exclusion), five (no coverage for joint venture), six (policy provides no coverage for Bluestone Coal Corporation), seven (certificate provides no coverage for Bluestone Coal Corporation) and nine (misrepresentation in application) of the amended complaint;



- (2) Counts one (reformation of the insurance policy for mutual mistake and/or scrivener's error) and two (coverage by estoppel) of Bluestone's counterclaims for reformation and declaratory judgment;
- (3) Counts one (coverage by estoppel) and two (negligence) of Bluestone's cross-claims against Lively;
- (4) Lively's counterclaim against Nautilus; and
- (5) Lively's third-party complaint against Bloss & Dillard.

It is further ordered, adjudged and decreed that the following motions are denied as moot:

- (1) Lively's motion to dismiss Bluestone's cross-claim; and
- (2) Bloss & Dillard's motion to dismiss Lively's third-party complaint.

It is further ordered, adjudged and decreed that Jim Lively Insurance, Inc. and Bloss & Dillard, Inc. be and hereby are dismissed as parties to this action.

It is further ordered that Nautilus Insurance Company, Jim Lively Insurance, Inc. and Bloss & Dillard, Inc. shall each bear their own attorneys' fees and costs. Bluestone reserves all claims against Nautilus for costs and attorneys' fees, including costs and fees incurred in connection with claims that are being dismissed pursuant to this motion and stipulation.

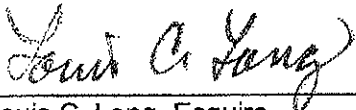
The Clerk shall serve copies of this order upon all parties.

It is so Ordered this 17th day of May, 2007.


BY THE COURT:



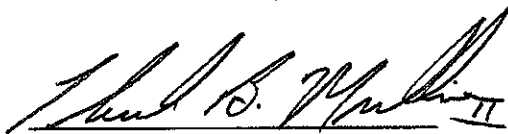
THOMAS E. JOHNSTON
UNITED STATES DISTRICT JUDGE




Louis C. Long, Esquire
Counsel for Plaintiff
Nautilus Insurance Company and
Third-Party Defendant Bloss &
Dillard, Inc.




Lee Murray Hall, Esquire
Counsel for Defendant
Bluestone Coal Corporation




Charles B. Mullens, II, Esquire
Counsel for Defendant Big Chig, Inc.,
Big Chig Trucking, also known as
Big Chig Trucking Company, and
J & H Trucking



C. William Davis, Esquire
Counsel for Defendant Logan & Kanawha
Coal Company



William Flanigan, Esquire
Counsel for Defendants Charles Sanders
and Loretta Bailey, individually and as
personal representative of the Estate of
Shawn Keith Bailey, deceased



Daniel R. Schuda, Esquire
Counsel for Defendant and Third-Party
Plaintiff Jim Lively Insurance, Inc.